

1
2 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
3 **IN THE STATE OF ARIZONA**
4

5 In the Matter of

6 ROBERT M. KERSHNER, M.D.

7 Holder of License No. 14390
8 For the Practice of Medicine
9 In the State of Arizona
10

Investigation No. 12322

**CONSENT AGREEMENT
FOR LETTER OF REPRIMAND**

11 By mutual agreement and understanding, between the Arizona Board of Medical
12 Examiners (hereafter "Board") and ROBERT M. KERSHNER, M.D., the parties, agree to the
13 following disposition of this matter.

14 1. Dr. Kershner acknowledges that he has read this Consent Agreement and the
15 stipulated Findings of Fact, Conclusions of Law and Consent Order; and, he is aware of and
16 understands the content of this document.

17 2. Dr. Kershner understands that by entering into this Consent Agreement for the
18 issuance of the foregoing Consent Order, Dr. Kershner voluntarily relinquishes any rights to
19 a hearing or judicial review in state or federal court on the matters alleged or to challenge
20 this Consent Agreement and the Consent Order in its entirety as issued by the Board and
21 waives any other cause of action related thereto or arising from said Order.

22 3. Dr. Kershner acknowledges and understands that this Consent Agreement and the
23 Consent Order will not become effective until approved by the Board and signed by its
24 Executive Director.

25 4. All admissions made by Dr. Kershner are solely for final disposition of this matter and
26 any subsequent related administrative proceedings or civil litigation involving the Board and
27 Dr. Kershner. Therefore, said admissions by Dr. Kershner are not intended or made for any

other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

5. Dr. Kershner acknowledges and agrees that, upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Dr. Kershner may not revoke his acceptance of the Consent Agreement and Consent Order or make any modifications to the document, although the Consent Agreement has not yet been accepted by the Board and issued by the Executive Director. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

6. Dr. Kershner further understands that this consent Agreement and Consent Order, once approved and signed, shall constitute a public record document, which may be publicly disseminated as a formal action of the Board.

7. If any part of the Consent Agreement and Consent Order is later declared void or otherwise unenforceable, the remainder of the Consent Order in its entirety shall remain in force and effect.



ROBERT M. KERSHNER, M.D.

Reviewed and accepted this
27 day of March 2000.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the state of Arizona.
2. Dr. Kershner is the holder of License No. 14390 for the practice of allopathic medicine in the State of Arizona.
3. Investigation No. 12322 was initiated on August 20, 1998, when the Board received notification of the settlement of a malpractice action filed on behalf of patient H.F. alleging that Dr. Kershner improperly managed post-operative medication following bilateral refractive eye surgery. The patient subsequently suffered glaucoma and visual field defect.
4. H.F. was a 51-year-old female who presented to Dr. Kershner on June 13, 1995 for an ophthalmologic evaluation. Dr. Kershner diagnosed high myopia, presbyopia and persistent myelination of the nerve of the left eye. He discussed different treatment modalities with H.F., including surgery.
5. On July 10, 1995 H.F. signed an informed consent for surgery, and on July 11 Dr. Kershner performed bilateral radial keratotomy on H.F. at Northwest Hospital.
6. From July 12, 1995 through March 20, 1996, Dr. Kershner continued to monitor H.F. During this time he instructed H.F. to use Tobradex eyedrops, an ophthalmic eyedrop medication containing 0.1% dexamethasone, which is a corticosteroid. She was instructed to resume use of Tobradex on August 18, 1995, and the prescription was renewed on February 19, 1996.
7. On March 1, 1996, Dr. Kershner saw H.F. and found her to have elevated ocular pressures in both eyes. Dr. Kershner diagnosed ocular hypertension due to the use of Tobradex and discontinued its use.

8. On March 7, 1996, Dr. Kershner advised H.F. there was a risk of glaucoma if further steroid use was continued.

9. On March 28, 1996, Dr. Kershner performed bilateral enhancement RK on H.F. at Northwest Hospital. His preoperative diagnosis was residual myopia, both eyes, and ocular hypertension.

10. Dr. Kershner continued to follow H.F., and on August 12, 1996, he examined her and found well-healed corneas with mild nuclear sclerotic cataracts in both eyes. Dr. Kershner suggested cataract surgery with lens implants and advised H.F. to obtain a second opinion.

11. H.F. contacted Dean Brick, M.D., who performed cataract surgery with lens implantation on H.F. in April 1997.

12. H.F. filed a medical malpractice action against Dr. Kershner in Pima County Superior Court on June 30, 1997, alleging that Dr. Kershner's follow-up care and treatment fell below the standard of care by failing to inform her of the risks of prolonged usage of steroid eye drops and in encouraging her to continue the use of steroid eye drops for an unreasonably and dangerously long period of time without adequate monitoring for glaucoma and/or cataracts.

13. On July 16, 1998, Dr. Kershner, through his medical malpractice insurer, settled the lawsuit with H.F.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Dr. Kershner.

2. The conduct and circumstances described above in paragraph 6 constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(25)(q) (conduct which is or might be harmful to the health of the patient).

ORDER

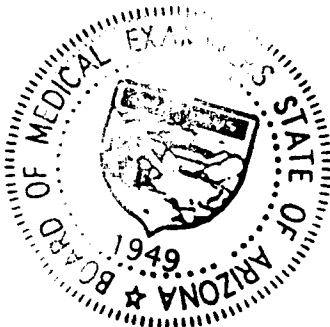
IT IS HEREBY ORDERED that:

1. Robert M. Kershner, M.D. is hereby issued a Letter of Reprimand for his unprofessional conduct as described above.
2. This Order is final disposition of Investigation No.12322.

DATED this 3rd day of March, 2000.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

[SEAL]



By: _____

Claudia Foutz

CLAUDIA FOUTZ
Executive Director
TOM ADAMS
Assistant Director/Regulation

Original of the foregoing filed this
3rd day of May, 2000 with:

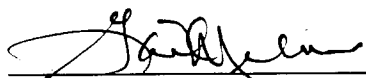
The Arizona Board of Medical Examiners
1651 E. Morten, Suite 210
Phoenix, Arizona 85020

Copy of the foregoing mailed by Certified
Mail this 3rd day of May, 2000, to:

Robert M. Kershner, M.D.
1925 West Orange Grove Rd. Ste 303
Tucson AZ 85704-1152

Copy of the foregoing hand-delivered
this 3rd day of May, 2000, to:

Michael N. Harrison, Assistant Attorney General
c/o Arizona Board of Medical Examiners
1651 E. Morten, Suite 210
Phoenix, Arizona 85020



Board Operations